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8 Attorneys for Defendant ARISTA NETWORKS, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 CISCO SYSTEMS, INC.,

13 Plaintiff,

14 v.

15 ARISTA NETWORKS, INC.,

16 Defendant.

Case No. 5:14-cv-05344-BLF (PSG)

**DECLARATION OF EDUARDO E.  
SANTACANA IN SUPPORT OF MOTION  
TO AMEND SCHEDULING ORDER OR,  
ALTERNATIVELY, TO STAY PATENT  
CLAIMS PENDING *INTER PARTES*  
REVIEW**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: August 1, 2016

1 I, EDUARDO E. SANTACANA, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and an associate  
3 at the law firm of Keker & Van Nest LLP, counsel for Defendant Arista Networks, Inc. in the  
4 above-captioned action. I am admitted to practice before this Court.

5 2. I have personal knowledge of the facts set forth herein, and if called upon to testify  
6 as a witness thereto, I could do so competently under oath.

7 3. Attached hereto as **Exhibit A** is a true and correct copy of Exhibit F to Cisco's  
8 Second Supplemental Response to Arista's Interrogatory 16, served October 14, 2015—a list of  
9 asserted CLI commands and “author/originator information” for the commands. Arista will  
10 contemporaneously file Exhibit A under seal with a separate administrative motion to file under  
11 seal pursuant to Civil Local Rule 79-5 because it was designated by Cisco as confidential under  
12 the protective order.

13 4. Attached hereto as **Exhibit B** is a true and correct copy of a table created by  
14 counsel for Arista Networks, Inc., listing the number of unique individual authors contained in  
15 Cisco's list of authors of CLI commands (attached hereto as Exhibit A) and the number of times  
16 they appear in the list. Arista will contemporaneously file Exhibit B under seal with a separate  
17 administrative motion to file under seal pursuant to Civil Local Rule 79-5 because it contains  
18 information that was designated by Cisco as confidential under the protective order.

19 5. Attached hereto as **Exhibit C** is a true and correct copy of the Introduction section  
20 and filing receipt of Arista's Petition for *Inter Partes* Review of U.S. Patent No. 7,047,526, which  
21 Arista filed with the U.S. Patent & Trademark Office Patent Trial and Appeal Board on  
22 November 4, 2015.

23 6. On October 15, 2015, Arista requested that Cisco confirm a deposition date of  
24 November 10 for Kirk Lougheed, whom Cisco had identified as a CLI command author. Cisco  
25 failed to respond, and on October 20, Arista again asked Cisco to confirm a deposition date of  
26 November 10. Cisco then informed Arista that Mr. Lougheed is not available on November 10  
27 and agreed to identify a date later in November. Cisco has not yet provided Arista with that date.  
28 Neither party has noticed a deposition of another CLI author.

7. Cisco served its court-ordered second supplemental response to Arista's Interrogatory 16, seeking information relating to the origins of each asserted CLI command, "hierarchy," mode, and prompt on October 14, 2015. In its response, Cisco provided a table of "author/originator information" for each asserted CLI command, attached hereto as Exhibit A. For 159 of those commands, Cisco listed only itself under the heading of "author/originator information." Cisco's response provides no "author/originator information" for any of the asserted "hierarchies," modes, or prompts. Cisco's response states that its investigation is "ongoing" and reserves the right to supplement its response pursuant to Federal Rule of Civil Procedure 26(e). In a meet and confer call on October 30, counsel for Cisco indicated their intent to supplement Cisco's response again, but would not commit to a date, asking instead for the parties to speak again on November 13.

8. Cisco's original complaint alleged that Arista unlawfully copied CLI command "responses." Dkt. No. 1 ¶ 50. The Second Amended Complaint does, too. Dkt. No. 64 ¶ 50. Cisco first provided its contentions regarding allegedly copied command responses on September 1, 2015, in its second supplemental response to Arista's Interrogatory 2. That response attaches an exhibit containing "a listing of some command responses from Cisco's copyrighted works that were copied by Arista . . . . The command responses identified in Exhibit E are exemplary only, as Cisco's investigation is ongoing." Arista has received no further information establishing an exhaustive list of command responses allegedly unlawfully copied by Arista. After receiving Cisco's court-ordered supplemental responses, Arista propounded Interrogatory 19 on October 20, 2015, seeking authorship information concerning all asserted command responses. Cisco's response to Interrogatory 19 is due November 19, 2015.

9. On September 14, 2015, counsel for Arista sent an e-mail message to counsel for Cisco requesting dates for depositions of patent inventors that Cisco's counsel represents. On September 22, 2015, counsel for Arista sent a follow-up message to counsel for Cisco stating: "We are awaiting your response regarding our request for the date on which Arista may depose, in San Francisco, the inventors of the '526 and '886 Patents." On September 28, 2015, counsel for Arista sent another follow-up message seeking proposed deposition dates for the patent

1 inventors. On October 12, 2015, four weeks after Arista's initial request and seven days before  
 2 the scheduled close of claim construction discovery, counsel for Cisco provided, for the first time,  
 3 proposed deposition dates for four patent inventors, three of which fell after the close of claim  
 4 construction discovery.

5 10. The first deposition of an inventor has yet to be scheduled, but it will take place no  
 6 earlier than mid-November 2015.

7 11. To date, Cisco has not provided Arista with a claim chart indicating how its  
 8 products use the claimed invention of U.S. Patent No. 7,047,526. On August 10, 2015, Arista  
 9 notified Cisco by e-mail that its Patent Local Rule 3-1(g) disclosures were deficient because  
 10 Cisco had failed to identify the claim or claims practiced by the Cisco products that Cisco had  
 11 identified as practicing the '526 and '886 patents. On August 18, after Cisco stated that it would  
 12 provide a substantive answer to an interrogatory asking for a limitation-by-limitation claim chart  
 13 specifically identifying where each limitation is found within each Cisco instrumentality, Arista  
 14 served Interrogatory 18 on Cisco: "For each Asserted Claim of the Asserted Patents that you  
 15 contend is practiced by a Cisco apparatus, product, device, process, method, act, or other  
 16 instrumentality, provide a limitation-by-limitation claim chart specifically identifying where each  
 17 limitation is found within each Cisco instrumentality, including a citation to all evidence upon  
 18 which you intend to rely to support your contention."

19 12. Cisco responded to Interrogatory 18 on September 21, but Cisco's claim chart for  
 20 the '526 patent referenced functionality only from Amteva products, none of which Cisco had  
 21 identified as practicing the patent under Patent Local Rule 3-1(g). On October 9, Arista wrote to  
 22 Cisco detailing the deficiencies in Cisco's response to Interrogatory 18. After Arista twice asked  
 23 for a response to the letter, once on October 19 and again on October 26, Cisco stated on October  
 24 26 that it would respond during the week of November 2.

25 13. On November 4, 2015, Arista filed a petition for *inter partes* review of each

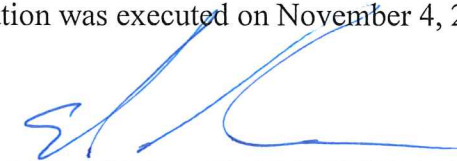
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1 asserted claim of the '526 patent. Arista will file a petition for *inter partes* review of each  
2 asserted claim of U.S. Patent No. 7,953,886 shortly.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is  
4 true and correct, and that this declaration was executed on November 4, 2015, in San Francisco,  
5 California.



6  
7 EDUARDO E. SANTACANA